

Fiscal impact reports (FIRs) are prepared by the Legislative Finance Committee (LFC) for standing finance committees of the NM Legislature. The LFC does not assume responsibility for the accuracy of these reports if they are used for other purposes.

Current and previously issued FIRs are available on the NM Legislative Website ([www.nmlegis.gov](http://www.nmlegis.gov)) and may also be obtained from the LFC in Suite 101 of the State Capitol Building North.

## FISCAL IMPACT REPORT

SPONSOR Moore ORIGINAL DATE 1/27/15  
LAST UPDATED \_\_\_\_\_ HB \_\_\_\_\_  
SHORT TITLE Removal from Office for Felony conviction SB 90  
ANALYST Jorgensen

### REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY15	FY16	FY17		
	Minimal	Minimal	Recurring	Children's Trust Fund

(Parenthesis ( ) Indicate Revenue Decreases)

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Administrative Office of the Courts (AOC)

Attorney General's Office (AGO)

Public Regulation Commission (PRC)

Secretary of State (SOS)

### SUMMARY

#### Synopsis of Bill

Senate Bill 90 amends Section 10-1-2 NMSA 1978 stipulating that a felony conviction of a public office holder results in immediate resignation of the official and forfeiture of campaign funds to the children's trust fund.

In Section 1, SB 90 amends sub-section A of Section 10-1-2 NMSA 1978, changing "felonious or infamous crime to "felony" and clarifying that conviction of such a crime would prohibit an individual from being elected or appointed to public office.

It also adds a new sub-section B which stipulates that a felony conviction of a public office holder results in immediate resignation of the official and forfeiture of campaign funds. New sub-section C defines public office as any state elective office, the office of a cabinet secretary or an appointed position on a public board or commission.

## **FISCAL IMPLICATIONS**

AOC analysis states that there will be a minimal administrative cost for statewide update, distribution and documentation of statutory changes. Additional fiscal impact on the judiciary would be proportional to the increased court filings, which may occur due to enforcement of this law.

Revenue may accrue from forfeited campaign committee funds to the children's trust fund, but the amount is dependent upon removal of public officials and will likely be minimal. There is also a question (see Significant Issues) as to whether such forfeiture is constitutional.

## **SIGNIFICANT ISSUES**

The New Mexico Constitution and not statutory law governs the automatic removal of elected officials. However, this bill would govern removal of other officials for felony convictions, namely cabinet secretaries and those appointed to a public board or commission

SB 90 does not specify whether the person's campaign funds are subject to forfeiture whether or not campaign debt exist or after all campaign debts have been paid.

According to AOC, previous analysis by the AGO on a similar bill stated that the second part of the bill regarding forfeiture of campaign funds raises questions under the First Amendment, since according to the AGO, such contributions constitute protected First Amendment speech. This raises the question as to whether they can be seized by the state in the case where a public official is removed from office because of a felony conviction.

AOC analysis points out that local elective offices are excluded from the definition of public office.

## **OTHER SUBSTANTIVE ISSUES**

AGO analysis of the provisions of SB 90 states: The New Mexico Supreme Court held that pursuant to Article VII, § 1, of the N.M. Constitution, the "removal of an elected official becomes effective upon the entry of the district court's judgment of [felony] conviction" (State ex rel. King v. Sloan, 2011 NMSC 020, 13). Therefore, with regards to elected officials, this bill is redundant. However, with regards to other public officials, SB 90 provides for the removal of public officers who are convicted of a felony."

## **POSSIBLE QUESTIONS**

Is there a policy reason for excluding local elected officials from this bill?

CJ/je